

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

WILLIE TAYLOR, III,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:09-cv-02285-LSC-PWG
	)	
MIKE HALE,	)	
	)	
Defendant.	)	

**ORDER**

The magistrate judge filed a Report and Recommendation on December 9, 2010, recommending that the plaintiff's claims against unknown Jefferson County Sheriff's Deputies and an unknown physician's assistant be dismissed without prejudice. (Doc. 26.) The magistrate judge further recommended that the following claims be dismissed pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2): (1) the plaintiff's federal and state law claims against Deputy U.S. Marshals John and Jane Doe in their official capacities; (2) the plaintiff's federal claims against Defendants Hale, Seale, Smith, McClure, and Mead in their official capacities for monetary relief; (3) the plaintiff's federal and state law claims against Defendants Hale and McClure in their individual capacities; (4) the plaintiff's Fourteenth Amendment due process claim; and (5) the plaintiff's Freedom of Information Act claim. *Id.*

The magistrate judge recommended that the following claims be referred for further proceedings: (1) the plaintiff's Eighth Amendment excessive force and state law assault and battery claims against Defendants Seale and Smith in their individual capacities; (2) the plaintiff's Eighth Amendment failure to protect and state law negligence claims against Defendant Mead in her

individual capacity; and (3) the plaintiff's Eighth Amendment failure to protect and state law negligence claims against Deputy U.S. Marshals John and Jane Doe in their individual capacities.

*Id.* The plaintiff filed objections to the Report and Recommendation on December 15, 2010. (Doc. 27.)

In his objections, the plaintiff sets forth additional facts which are not material to whether he has stated a cognizable claim and merely restates his assertion that his right to due process was violated. Additionally, the plaintiff offers a physical description of one unknown sheriff's deputy he claims used excessive force against him and an unknown physician's assistant he claims denied him medical care. It is not certain whether the plaintiff's description of these individuals is sufficient so that they may be identified for service. Therefore, the unknown sheriff's deputy and physician's assistant are due to be dismissed without prejudice at this time. The plaintiff may later move to amend his complaint provided he is able to ascertain proper names.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the Report and Recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's Report is due to be and is hereby ADOPTED and the Recommendation is ACCEPTED. It is therefore ORDERED, ADJUDGED, and DECREED that all of the plaintiff's claims with the exception of his Eighth Amendment excessive force and state law assault and battery claims against Defendants Seale and Smith in their individual capacities, his Eighth Amendment failure to protect and state law negligence claims against Defendant Mead in her individual capacity, and his Eighth Amendment failure to protect and state law negligence claims against Deputy U.S. Marshals John and Jane Doe in their individual capacities are DISMISSED pursuant to 28 U.S.C. § 1915A(b). Additionally, the plaintiff's claims against unknown Jefferson County Sheriff's

Deputies and unknown physician's assistant are DISMISSED WITHOUT PREJUDICE. It is further ORDERED that the plaintiff's remaining claims are REFERRED to the magistrate judge for further proceedings.

Done this 31<sup>st</sup> day of January 2011.

  

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L. SCOTT COOGLER  
UNITED STATES DISTRICT JUDGE  
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